



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2015-0042; FRL-9952-09-Region 8]

Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Second Ten-Year PM₁₀ Maintenance Plan for Lamar

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the State of Colorado. On May 13, 2013, the Governor of Colorado's designee submitted to the EPA a revised maintenance plan for the Lamar area for the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to 10 microns (PM₁₀). The EPA is approving the revised maintenance plan with the exception of one aspect of the plan's contingency measures.

DATES: This final rule is effective on **[Insert date 30 days from the date of publication in the Federal Register]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2015-0042. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Air Program, Environmental Protection

Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. The EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: James Hou, Air Program, U.S.

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SUPPLEMENTARY INFORMATION:

I. Background

The Lamar area was designated nonattainment for PM₁₀ and classified as moderate by operation of law upon enactment of the Clean Air Act (CAA) Amendments of 1990. See 56 FR 56694, 56705, 56736 (November 6, 1991). EPA approved Colorado's nonattainment area SIP for the Lamar PM₁₀ nonattainment area on June 9, 1994 (59 FR 29732).

On May 13, 2013, the Governor of Colorado's designee submitted the second 10-year update of the PM₁₀ maintenance plan for the Lamar area to the EPA. On June 1, 2016, the EPA published a proposed rulemaking in which we proposed to approve the 10-year update because it demonstrates continued maintenance of the PM₁₀ NAAQS through 2025.

II. Response to Comments

We received one comment letter during the public comment period, which was submitted anonymously.

Comment: Given the high number of high wind occurrences, and given the consistently windy

nature of the Lamar area, the EPA cannot rely on the Exceptional Events Rule (EER) to ignore PM_{10} exceedances. In doing so, the EPA is failing to provide environmental justice for people in rural areas, by failing to provide them with clean air.

Response: 55 exceedances between two monitors over the course of 14 years were reported by the City of Lamar. The EPA notes that high wind events do not have to be rare to be considered an exceptional event. Quoting from the “Interim Guidance on the Preparation of Demonstrations in Support of Requests to Exclude Ambient Air Quality Data Affected by High Winds Under the Exceptional Events Rule,” US EPA May 2013 page 20, it states,

“The EPA will use a weight-of-evidence approach to assess each demonstration and comparison of the concentrations during event(s) in question with historical concentration data on a case-by-case basis. The EPA acknowledges that natural events, such as high wind dust events, can recur and still be eligible for exclusion under the EER. Therefore, events do not necessarily have to be rare to satisfy this element.”

Of the 34 out of 55 flagged PM_{10} high wind monitored values, which the EPA has concurred with, each event has met the criteria set forth under the EER. Having satisfied these requirements, and having obtained concurrence from the EPA, we find that the exclusion of these data from regulatory decisions is appropriate. Additionally, the EPA's review and concurrence with the 34 of 55 flagged PM_{10} high wind monitored values is consistent with the EER, and such analysis is applied uniformly throughout the state.

III. Final Action

We are approving the revised Lamar PM_{10} Maintenance Plan that was submitted to us on May 13, 2013, with one exception. We are not acting on the submitted update to the Natural Events Action Plan (NEAP), as the NEAP is not part of the SIP. We are approving the remainder of the revised maintenance plan because it demonstrates maintenance through 2025 as required

by CAA section 175A(b), retains the control measures from the initial PM₁₀ maintenance plan that the EPA approved on October 25, 2005, and meets other CAA requirements for a section 175A maintenance plan. We are excluding from use in determining that Lamar continues to attain the PM₁₀ NAAQS, exceedances of the PM₁₀ NAAQS that were recorded at the Lamar Power Plant PM₁₀ monitor on February 9, 2002; March 7, 2002; May 21, 2002; June 20, 2002; April 5, 2002; May 22, 2008; January 19, 2009; April 3, 2011; and November 5, 2011, because the exceedances meet the criteria for exceptional events caused by high wind natural events.

Additionally, the EPA is proposing to exclude from use in determining that Lamar continues to attain the PM₁₀ NAAQS, exceedances of the PM₁₀ NAAQS that were recorded at the Municipal Complex PM₁₀ monitor on May 21, 2002; June 20, 2002; April 5, 2005; January 19, 2009; February 8, 2013; March 18, 2012; April 2, 2012; April 9, 2013; May 1, 2013; May 24, 2013; May 25, 2013; May 28, 2013; December 24, 2013; February 16, 2014; March 11, 2014; March 15, 2014; March 18, 2014; March 29, 2014; March 30, 2014; March 31, 2014; April 23, 2014; April 29, 2014; November 10, 2014; April 1, 2015; and April 2, 2015, because the exceedances meet the criteria for exceptional events caused by high wind natural events. We are also approving the revised maintenance plan's 2025 transportation conformity motor vehicle emission budget for PM₁₀ of 764 lbs/day.

IV. Statutory and Executive Orders Review

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements,

but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, these actions merely approve state law as meeting federal requirements and do not impose additional requirements beyond those imposed by state law. For this reason, these actions:

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Do not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP does not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian Country, the final rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States

prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days from the date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile Organic Compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 26, 2016.

Debra H. Thomas,
Acting Regional Administrator,
Region 8.

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